

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING
A JUDGE NO. 02-487

Supreme Court Case
No.: SC03-1171

**RESPONDENT'S MOTION IN LIMINE
TO EXCLUDE ALL DOCUMENTS PROVIDED
TO THE JUDICIAL QUALIFICATIONS COMMISSION
BY THE UNITED STATES AIR FORCE**

The Honorable Gregory P. Holder ("Judge Holder"), by counsel, files with the Hearing Panel of the Florida Judicial Qualifications Commission ("the Panel") this Motion in Limine to Exclude all Documents Provided to the Florida Judicial Qualifications Commission ("JQC") by the United States Air Force.

1. The JQC obtained numerous confidential documents concerning the Air Force's investigation of Judge Holder (the "Confidential Air Force Documents" or "Documents") in violation of Judge Holder's right of privacy pursuant to the Privacy Act, 5 U.S.C. § 552a, and the Florida Constitution, Art. I, § 12, Fla. Const. and Art. I, § 23, Fla. Const.

2. The Privacy Act states "[n]o agency shall disclose any record . . . to any person, . . . , except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains" 5 U.S.C. § 552a.

3. Judge Holder never authorized the Air Force to release the Confidential Air Force Documents to the JQC.

4. The JQC, through one or more of its agents, represented itself as a law enforcement entity as a tactic to obtain the Confidential Air Force Documents pursuant to an enumerated exception in the Privacy Act. *See* Exhibit 1.

5. The JQC is a disciplinary body commissioned by the Florida Supreme Court and is neither a criminal nor a civil law enforcement entity. *See State ex rel. Turner v. Earle*, 295 So. 2d 609 (Fla. 1974); *See also Merckel v. State*, 529 So.2d 269 (Fla. 1988) (dissenting op.).

6. Additionally, the JQC purposely failed to provide Judge Holder with a copy of the Subpoena requesting the Confidential Air Force Documents, thus preventing Judge Holder from opposing the production of the Documents. *See* Exhibit 2.

7. In fact, had the JQC not subsequently provided the Confidential Air Force Documents to members of the press, Judge Holder would have remained unaware of the JQC's improper actions.

8. The JQC intends to introduce the Confidential Air Force Documents into evidence at the Final Hearing. *See* Florida Judicial Qualifications Commission's Prehearing Statement, filed August 25, 2004.

9. The right of privacy afforded by Florida's Constitution embraces more privacy consideration and affords more protection than the Federal Constitution. *In re T.W.*, 551 So.2d 1186 (Fla. 1986).

10. Where an individual's private information and material is obtained in violation of Federal Privacy Rights, Florida's constitutional right of privacy precludes the use or dissemination of such evidence in a judicial, administrative, or regulatory proceeding. Art. I, § 12, Fla. Const.; Art. I, § 23, Fla. Const.; *See Weiner v. Kelly*, 82 So.2d 155 (Fla. 1955); *State v. Hutchinson*, 404 So.2d 361 (Fla. 2d DCA 1981); *e.g.* § 934.06, Fla. Stat.

11. The JQC misrepresented itself in order to obtain the Confidential Air Force Documents in violation of Judge Holder's statutory and constitutional rights of privacy. *See* 5 U.S.C. § 552a; Art. I, § 12, Fla. Const.; Art. I, § 23, Fla. Const.

12. The admission into evidence of the Confidential Air Force Documents would allow the JQC to benefit from its intentional misconduct resulting in extreme prejudice to Judge Holder's fundamental right of privacy.

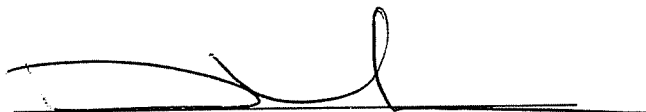
13. Finally, under Section 90.403, Florida Statutes, the prejudicial nature of the evidence outweighs any probative value.

WHEREFORE, Judge Holder requests that this Panel enter an order precluding the admission into evidence at the Final Hearing all documents

provided to the Florida Judicial Qualifications Commission by the United States Air Force in violation of Judge Holder's privacy rights.

Dated: August 25, 2004

Respectfully Submitted,



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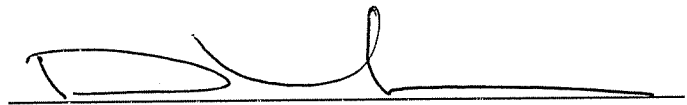
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Counsel for Judge Gregory P. Holder

CERTIFICATE OF SERVICE

I certify that on August 25, 2004, a copy of the foregoing has been served by U.S. Mail to Ms. Brooke Kennerly, Hearing Panel Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303; and by telecopier and U.S. Mail to:

Honorable John P. Kuder, Chairman of the Hearing Panel, Judicial Building, 190 Governmental Center, Pensacola, FL 32501; John Beranek, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302; Charles P. Pillans, III, Esq., JQC Special Counsel, Bedell Ditmar DeVault Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 32202; and, Thomas C. MacDonald, Jr., JQC General Counsel, 1904 Holly Lane, Tampa, FL 33629.



Attorney

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EXHIBIT

1

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May 22, 2003

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FROM: Charles P. Pillans III

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STATE OF FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION
1110 THOMASVILLE ROAD
TALLAHASSEE, FLORIDA 32303
(850) 488-1551

Before the Judicial Qualifications Commission
State of Florida
Inquiry No. 02-487

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

TO: Colonel Michael R. McAntee
United States Air Force
HQ ARPC/JA
6760 E. Irvington Place, #5200
Denver, CO 80280-5200

YOU ARE COMMANDED to appear at Jacksonville, Florida on
_____, 2003 at 10:00 a.m., and to have with you at that
time and place the following:

Any and all records, which are not otherwise
privileged, relating to an investigation
conducted by the United States Air Force of
allegations that Colonel Gregory P. Holder,
USAFR, submitted a research report to the
Faculty of the Air War College Directorate of
Nonresident Studies, Air University, entitled
"An Analysis of the Anglo American Combined
Bomber Offensive in Europe During World War
II," with respect to which Colonel Holder may
have committed plagiarism, by copying verbatim
or substantially verbatim a report prepared in
January 1996 by E. David Hoard SAF/GCN.

These items will be inspected and may be copied at that time.
You will not be required to surrender the original items. You may
comply with this subpoena by providing legible copies of the items
to be produced to the attorney whose name appears on this subpoena
on or before the scheduled date of production. You may condition

the preparation of the copies upon the payment in advance of the reasonable cost of preparation. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena.

If you fail to:

- (1) appear as specified; or
- (2) furnish the records instead of appearing as provided above; or
- (3) object to this subpoena

you may be in contempt of the Commission.

The Judicial Qualifications Commission, is an agency of the State of Florida vested by Article 5, Section 12, of the Constitution of the State of Florida, with jurisdiction to investigate and recommend to the Supreme Court of Florida the discipline of a judge whose conduct warrants such discipline and the law enforcement purpose of this subpoena is to assist in an investigation by the Judicial Qualifications Commission of whether, based upon the alleged plagiarism, Colonel Gregory P. Holder is fit to retain the office of Circuit Judge of the Thirteenth Judicial Circuit of Florida or should otherwise be disciplined for such conduct.

You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the Commission, you shall respond to this subpoena as directed.

DATED on _____, 2003.

JUDICIAL QUALIFICATION COMMISSION

Chairman

Charles P. Pillans, Esquire
101 East Adams Street
Jacksonville, Florida 32202
Telephone: (904) 353-0211

Florida Bar No. 0100066

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NAME

Mr Pillans

Sir

Here is a starting point on a FOIA request if you care to follow that path. I hope you find this information to be helpful.

Michael R McAntee
Col USAF

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DATE

13 MAY 03

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9.2.7. Pay (including base pay, special pay, all allowances except Basic Allowance for Quarters [BAQ] and Variable Housing Allowance [VHA]).

9.2.8. Gross salary for civilians.

9.2.9. Past duty assignments.

9.2.10. Present and future approved and announced stateside assignments.

9.2.11. Position title.

9.2.12. Office, unit address, and duty phone number.

9.2.13. Date of rank.

9.2.14. Entered on active duty (EAD) date.

9.2.15. Pay date.

9.2.16. Source of commission.

9.2.17. Professional military education.

9.2.18. Promotion sequence number.

9.2.19. Military awards and decorations.

9.2.20. Duty status of active, retired, or reserve.

9.2.21. Active duty official attendance at technical, scientific, or professional meetings.

9.2.22. Biographies and photos of key personnel.

9.3. Disclosing Other Information . Use these guidelines to decide whether to release information:

9.3.1. Would the subject have a reasonable expectation of privacy in the information requested?

9.3.2. Would disclosing the information benefit the general public? The Air Force considers information as meeting the public interest standard if it reveals anything regarding the operations or activities of the agency, or performance of its statutory duties.

9.3.3. Balance the public interest against the individual's probable loss of privacy. Do *not* consider the requester's purpose, circumstances, or proposed use.

→ 9.4. Agencies or Individuals to Whom the Air Force May Release Privacy Information. The Air Force may release information without consent to these individuals or agencies:

9.4.1. Agencies outside DoD for a Routine Use published in the *Federal Register*. The purpose of the disclosure must be compatible with the purpose in the Routine Use. When initially collecting the information from the subject, the Routine Uses block in the Privacy Act Statement must name the agencies and reason.

9.4.2. The Bureau of the Census to plan or carry out a census or survey under Title 13, U.S.C. Section 8.

9.4.3. A recipient for statistical research or reporting. The recipient must give advanced written assurance that the information is for statistical purposes only. *NOTE*: No one may use any part of the

record to decide on individuals' rights, benefits, or entitlements. You must release records in a format that makes it impossible to identify the real subjects.

9.4.4. The Archivist of the United States and the National Archives and Records Administration (NARA) to evaluate records for permanent retention. Records stored in Federal Records Centers remain under Air Force control.

* 9.4.5. A federal, state, or local agency (other than DoD) for civil or criminal law enforcement. The head of the agency or a designee must send a written request to the system manager specifying the record or part needed and the law enforcement purpose. The system manager may also disclose a record to a law enforcement agency if the agency suspects a criminal violation. This disclosure is a Routine Use for all Air Force systems of records and is published in the *Federal Register*.

9.4.6. An individual or agency that needs the information for compelling health or safety reasons. The affected individual need not be the record subject.

9.4.7. The Congress, a congressional committee, or a subcommittee, for matters within their jurisdictions.

9.4.8. A congressional office acting for the record subject. A published, blanket Routine Use permits this disclosure. If the material for release is sensitive, get a release statement.

* 9.4.9. The Comptroller General or an authorized representative of the General Accounting Office on business.

9.4.10. A court order of a court of competent jurisdiction, signed by a judge.

9.4.11. A consumer credit agency according to the Debt Collections Act when a published system notice lists this disclosure as a Routine Use.

9.4.12. A contractor operating a system of records under an Air Force contract. Records maintained by the contractor for the management of contractor employees are not subject to the PA.

9.5. Disclosing the Medical Records of Minors . Air Force personnel may disclose the medical records of minors to their parents or legal guardians. The laws of each state define the age of majority.

9.5.1. The Air Force must obey state laws protecting medical records of drug or alcohol abuse treatment, abortion, and birth control. If you manage medical records, learn the local laws and coordinate proposed local policies with the servicing SJA.

9.5.2. Outside the United States (overseas), the age of majority is 18. Unless parents or guardians have a court order granting access or the minor's written consent, they will not have access to minor's medical records overseas when the minor sought or consented to treatment between the ages of 15 and 17 in a program where regulation or statute provides confidentiality of records and he or she asked for confidentiality.

9.6. Disclosure Accountings . System managers must keep an accurate record of all disclosures made from any system of records except disclosures to DoD personnel for official use or disclosures under the FOIA. System managers may use AF Form 771, *Accounting of Disclosures*.

9.6.1. System managers may file the accounting record any way they want as long as they give it to the subject on request, send corrected or disputed information to previous record recipients, explain any disclosures, and provide an audit trail for reviews. Include in each accounting:



STATE OF FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION
1110 THOMASVILLE ROAD
TALLAHASSEE, FLORIDA 32303
(850) 488-1581

Before the Judicial Qualifications Commission
State of Florida
Inquiry No. 02-487

SUBPOENA DUCES TECUM WITHOUT DEPOSITION

TO: Colonel Michael R. McAntee
United States Air Force
HQ ARPC/JA
6760 E. Irvington Place, #5200
Denver, CO 80280-5200

YOU ARE COMMANDED to appear at Jacksonville, Florida on
June 23, 2003 at 10:00 a.m., and to have with you at that
time and place the following:

Any and all records, which are not otherwise privileged, relating to an investigation conducted by the United States Air Force of allegations that Colonel Gregory P. Holder, USAFR, submitted a research report to the Faculty of the Air War College Directorate of Nonresident Studies, Air University, entitled "An Analysis of the Anglo American Combined Bomber Offensive in Europe During World War II," with respect to which Colonel Holder may have committed plagiarism, by copying verbatim or substantially verbatim a report prepared in January 1996 by E. David Hoard SAF/GCN.

EXHIBIT

2

These items will be inspected and may be copied at that time. You will not be required to surrender the original items. You may comply with this subpoena by providing legible copies of the items to be produced to the attorney whose name appears on this subpoena on or before the scheduled date of production. You may condition

the preparation of the copies upon the payment in advance of the reasonable cost of preparation. You may mail or deliver the copies to the attorney whose name appears on this subpoena and thereby eliminate your appearance at the time and place specified above. You have the right to object to the production pursuant to this subpoena at any time before production by giving written notice to the attorney whose name appears on this subpoena.

If you fail to:

- (1) appear as specified; or
- (2) furnish the records instead of appearing as provided above; or
- (3) object to this subpoena

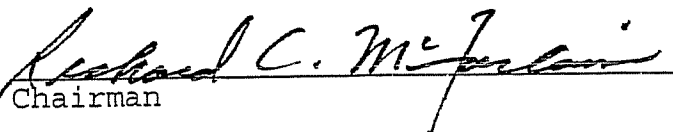
you may be in contempt of the Commission.

The Judicial Qualifications Commission, is an agency of the State of Florida vested by Article 5, Section 12, of the Constitution of the State of Florida, with jurisdiction to investigate and recommend to the Supreme Court of Florida the discipline of a judge whose conduct warrants such discipline and the law enforcement purpose of this subpoena is to assist in an investigation by the Judicial Qualifications Commission of whether, based upon the alleged plagiarism, Colonel Gregory P. Holder is fit to retain the office of Circuit Judge of the Thirteenth Judicial Circuit of Florida or should otherwise be disciplined for such conduct.

You are subpoenaed to appear by the following attorney, and unless excused from this subpoena by this attorney or the Commission, you shall respond to this subpoena as directed.

DATED on June 2, 2003.

JUDICIAL QUALIFICATION COMMISSION


Chairman

Charles P. Pillans, Esquire
101 East Adams Street
Jacksonville, Florida 32202
Telephone: (904) 353-0211

Florida Bar No. 0100066

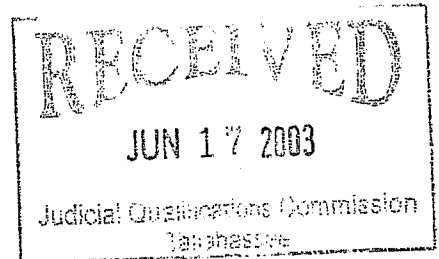


DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR RESERVE PERSONNEL CENTER

11 June 2003

HQ ARPC/JA
6760 E. Irvington Place #5200
Denver CO 80280-5200

STATE OF FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
1110 Thomasville Road
Tallahassee FL 32303




ATTN: Charles P. Pillans, Esquire

RE: Inquiry No. 02-487; Holder, Gregory P.

IAW your 2 June 2003 subpoena, the following documents are provided:

1. Ltr, 17 Jan 03, from US DOJ, w/enclosures
2. Ltr, 26 Feb 03, from HQ ARPC/CC, w/fax cover sheet
3. Col Leta's Commander Directed Report of Investigation (CC ROI), 16 Mar 03
4. AWC paper, faxed from Col Hoard to Col Leta on 17 Mar 03
5. Ltr, 26 Mar 03, from HQ ARPC/CC; Ltr, 4 Apr 03, from Col Leta, w/Nasco affidavit
6. Supplemental to CC ROI, 19 Apr 03
7. Misc. emails
8. Correspondence with/documents received from Florida Judicial Qualifications Comm'n
9. Ltr, 22 Jan 03, from HQ ARPC/JA

If you have any questions, please don't hesitate to contact Major Jeff Vires at 303-676-6494.


MICHAEL R. MCANTEE, Colonel, USAF
Staff Judge Advocate